IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

THURSDAY, THE 21ST JUNE 2007 / 31ST JYAISHTA 1929

Bail Appl..No. 3773 of 2007()

(S.T. 214/2005 of JUDICIAL FIRST CLASS MAGISTRATE COURT VIII, THIRUVANANTHAPURAM.)

PETITIONER/ACCUSED

SOUNDARA RAJAN, T.C.8/1147(2),
HOUSE NO.C-35, MYTHRI NAGAR, VALIYAVILA,
THIRUMALA P.O., THIRUVANANTHAPURAM.

BY ADV. SRI.P.SIVARAJ

RESPONDENTS:

SUB INSPECTOR OF POLICE,
POOJAPURA, THIRUVANANTHAPURAM, REPRESENTED BY
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,ERNAKULAM.

BY ADV. SRI. JAI GEORGE, PUBLIC PROSECUTOR

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 21/06/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

B.A.Nos.3773 and 3775 of 2007

Dated this the 21st day of June, 2007

ORDER

The petitioners, spouses are accused in two different prosecutions, both under Section 138 of the Negotiable Instruments Act. Consequent to their non appearance before the learned Magistrate, they find non bailable warrants issued by the learned Magistrate chasing them. The petitioners, in these circumstances, have come before this Court for issue of appropriate directions under Section 438 and/482 Cr.P.C in their favour.

2. After the decision in **Bharat Chaudhary v. State of Bihar** [A.I.R 2003 S.C 4662], it is well settled that powers under Section 438 Cr.P.C can be invoked even in favour of the accused who apprehends arrest in execution of a non bailable warrant issued in a pending proceedings. But even for that, sufficient and satisfactory reasons must be shown to exist to justify the invocation of the extraordinary equitable discretion under Section 438 Cr.P.C. I do not find any such reasons in these cases.

3. It is for the petitioners to appear before the learned Magistrate and explain to the learned Magistrate the circumstances under which they could not earlier appear before the learned Magistrate. I have no reason to assume that the learned Magistrate

would not consider such application on merits, in accordance with law and expeditiously. Every court must do the same. No special or specific direction appears to be necessary. Sufficient general directions have already been issued in **Alice George v. The Deputy Superintendent of Police [**2003(1) KLT 339].

4. This application is, in these circumstances, dismissed. But with the specific observation that if the petitioners appear before the learned Magistrate and apply for bail after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits and expeditiously - on the date of surrender itself.

5. Hand over a copy of this order to the learned counsel for the petitioners.

R.BASANT, JUDGE)

rtr/-